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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,994	06/26/2006	Stephane Lavallee	BEAUMONT-35	9137

45722 7590 04/29/2008  
Howard IP Law Group  
P.O. Box 226  
Fort Washington, PA 19034

EXAMINER
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FISHER, ELANA BETH

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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04/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/560,994	LAVALLEE, STEPHANE	
	<b>Examiner</b>	<b>Art Unit</b>	
	ELANA B. FISHER	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/6/2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/16/2005</u> .                                              | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "28" and "68" have been used to designate both the means for setting the position of the support element and an element. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 recites the limitation "the cutting guide" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by DeOrio et al. (U.S. Patent 5,681,316).

a. Regarding claim 1, DeOrio et al. disclose a device (10) comprising a base (32) intended to be attached to the bone, a support element (20), and means (38, 40, 42) for setting the position of the support element according to at least three degrees of rotational freedom and two degrees of translational freedom (Column 2, lines 63-66), with each setting means being capable of selectively and continuously setting the position according to a degree of rotational and/or translational freedom in decoupled fashion with respect to the other degrees of rotational and/or translational freedom, in which support element is intended to receive in determined fashion at least one seat (22) intended to be attached to the bone and to receive the cutting guide, with the seat being detachable from the support element (20), and in which the support element is intended to receive means (58) for determining the position of the support element.

b. Regarding claim 2, the setting means (38, 40, 42) are capable of setting the position of the support element (20) according to three degrees of rotational freedom and three degrees of translational freedom (Column 2, lines 63-66).

c. Regarding claim 3, each of the means (38, 40, 42) for setting the position of the support element (20) according to one degree of translational freedom comprises an element (16) having a threaded opening (see diagram provided) in which is screwed a threaded rod (see diagram provided).

d. Regarding claim 4, at least one means (40) for setting the position of the support element (20) according to one degree of rotational freedom comprises a pivotal connection (52, 54) and means (22) for blocking the degree of rotational freedom.

e. Regarding claim 5, the base (32) comprises a cylindrical portion (28), with the device further comprising a first cylindrical piece (12) assembled to freely rotate on the cylindrical portion (30). Additionally there are means (36) for blocking the first cylindrical piece with respect to the cylindrical portion, a second cylindrical piece (14) assembled to freely rotate and shift on the cylindrical portion, and means (34) for setting the axial position of the second cylindrical piece with respect to the first cylindrical piece.

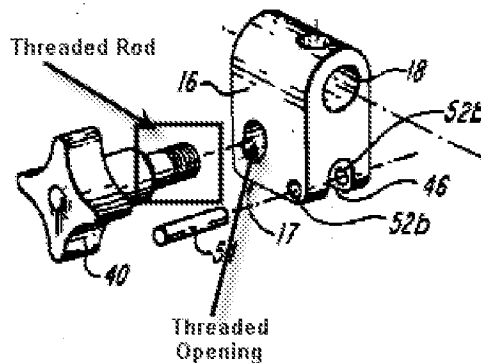
f. Regarding claim 8, there is a first frame (58) arranged in a second frame (64), with the second frame (64) comprising means (42) for guiding the first frame in translation along a determined direction (vertical axis).

g. Regarding claim 9, the support element (20) is pivotally assembled on the second frame (64) around an axis parallel to the determined direction.

h. Regarding claim 10, the support element (20) comprises several openings (72) adapted to the assembly of the seat (22) according to a determined configuration from among several determined configurations.

i. Regarding claim 11, the seat (22) and the cutting guide (26) are solid.

Regarding the above claims see figures 1-2 and the diagram provided on the following page.



6. Claims 1 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tidwell (U.S. Patent 5,540,692).

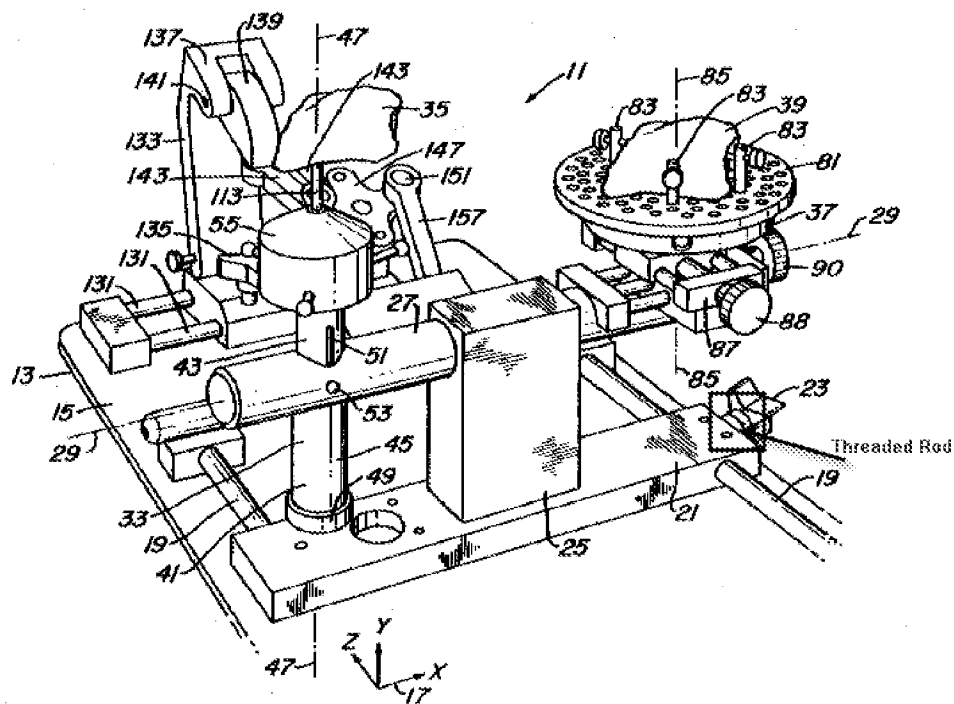
a. Regarding claim 1, Tidwell discloses a device (11) comprising a base (13) intended to be attached to the bone, a support element (81), and means (83, 88, 90) for setting the position of the support element according to at least three degrees of rotational freedom and two degrees of translational freedom, with each setting means being capable of selectively and continuously setting the position according to a degree of rotational and/or translational freedom in decoupled fashion with respect to the other degrees of rotational and/or translational freedom, in which support element is intended to receive in determined fashion at least one seat (37) intended to be attached to the bone and to receive the cutting guide, with the seat being detachable from the support element (20), and in which the support element is intended to receive means for determining the position of the support element.

b. Regarding claim 6, the device further comprises a trolley (21) assembled on the base (13) and two sliding rails (19) capable of pivoting with respect to the trolley around

a determined rotation axis (X) and capable of sliding with respect to the trolley according to said determined axis.

c. Regarding claim 7, the device further comprises a threaded rod (see diagram provided) extending from the trolley (21) along the determined axis (X), and a thumb wheel (23) screwed on the threaded rod and capable of sliding the sliding rails (19) with respect to the trolley.

Regarding the above claims see figure 1 and the diagram provided below.



## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643.

Art Unit: 3733

The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elana B Fisher/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733